

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MAXWELL SHOE COMPANY, INC.,

Plaintiff,

v.

EDELMAN SHOE COMPANY, LLC and
SAM EDELMAN

Defendants.

Civil Action No. 04-10694 RCL

**DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTIONS TO
MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATION ON
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Rule 72(a), Fed. R. Civ. P., Defendants Edelman Shoe Company, LLC and Sam Edelman hereby respond to the objections to the Magistrate Judge's Findings and Recommendation on Plaintiff's Motion for Preliminary Injunction (Dkt. #40) filed by Plaintiff Maxwell Shoe Company, Inc. ("Maxwell"). Defendants do not dispute the Magistrate Judge's recommended ruling, but respond herein to Maxwell's objections.

Instead of raising proper objections to the Magistrate Judge's Findings and Recommendation, Maxwell has reargued the motion in its entirety. The purpose of filing objections to a magistrate judge's recommendations is to identify claimed defects in the report that are either clearly erroneous or contrary to law (*See* Rule 72 (a), Fed. R. Civ. P.), not to reargue the case.

The Magistrate Judge did not make any findings that are clearly erroneous, nor did she commit any error of law. On the contrary, the Magistrate Judge carefully and properly weighed each of the likelihood of confusion factors to determine that there is no likelihood of confusion

between the marks in issue. Indeed, Maxwell indicates in its "objections" that it agrees with the Magistrate Judge's findings with respect to the majority of the likelihood of confusion factors.

Accordingly, the Court should adopt the Magistrate Judge's Findings and Recommendation in its entirety, and should enter an order denying Maxwell's Motion for Preliminary Injunction.

Respectfully submitted,

EDELMAN SHOE COMPANY, LLC and
SAM EDELMAN

By their counsel,



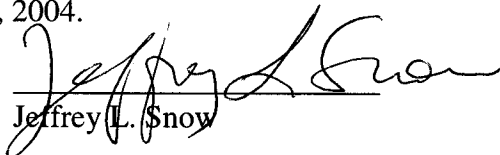
Jeffrey L. Snow, BBO # 566388
Christopher Centurelli, BBO # 640974
KIRKPATRICK & LOCKHART LLP
75 State Street
Boston, Massachusetts 02109
617.261.3100 phone

Dated: September 8, 2004

Of Counsel:
Mark I. Peroff
Darren W. Saunders
KIRKPATRICK & LOCKHART LLP
599 Lexington Avenue
New York, New York 10022
212.536.3900 phone

Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorney of record for Plaintiff by hand on September 8, 2004.


Jeffrey L. Snow